IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 9818 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UTTAMCHAND BHURALAL SHAH, SINCE DECEASED THROUGH HEIRS & L.R.
Versus
CHARITY COMMISSIONER

Appearance: MR KH BAXI for Petitioner No. 1-1/5
Mr.M.K. Dagli, Assistant GOVERNMENT PLEADER,
for Respondent No. 1,4
MR VS PARIKH for Respondent No. 2
MR CG SHARMA for Respondent No. 2
MR GIRISH D BHATT for Respondent No. 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 13/09/2002
ORAL JUDGEMENT

1. The petitioner is a tenant occupying the premises, which belongs to the respondent No.2-Trust. Since the respondent-Trust wanted to dispose of certain property, a public notice was issued on 26.10.1998 for the sale of the said property. For that purpose, upset price was fixed at Rs.4,60,000/-. Tenders in response to the said notice were to be submitted, together with 10% deposit of the upset price. A copy of the said notice is annexed with the petition at Annexure 'A'. The petitioner applied in response to the said public notice

and submitted his tender at the rate of Rs.4,71,000/-. Along with his tender application, letter was addressed by the petitioner, in which he has stated that Banakhat has been entered into between the petitioner and the respondent-Trust on 15.5.1998, and whatever earnest money he has paid towards the said Banakhat, the same may be adjusted towards the ultimate price.

2. The petitioner has averred in the petition that, subsequently, the aforesaid sum of Rs.4,71,000/- was revised by him and revised offer was give at Rs.5,31,000/- and difference of amount towards the deposit was also paid by the petitioner. The tenders were opened by the Charity Commissioner on 17.11.1998, and as per the averment in the petition, the Charity Commissioner, after considering the offers of the various offerers, tried to negotiate with the offerers and bidders were asked to increase their offer. According to the petitioner, the said procedure adopted by the Charity Commissioner is in the nature of initiating auction proceedings by the Charity Commissioner, for which, according to him, no public advertisement was given. It is submitted on behalf of the petitioner that at the time of submitting the tender, the offer which was mentioned by the petitioner was Rs.5,31,000/- as per the tender and the offer of the respondent No.3 at the time of submitting his tender was Rs.5,21,000/-. It is, therefore, submitted that, in case the offer was required to be considered as per the public advertisement, and on the basis of the tender, the bid of the petitioner was higher. However, this argument is denied by Mr.Bhatt, as, according to him, the bid of respondent No.3 was higher as compared to the bid of the petitioner. At that stage, the petitioner realised that the offer of the respondent No.3 was the highest and amongst all the offerers present before the Charity Commissioner, nobody has offered higher amount than the one offered by the respondent No.3. The petitioner submitted an application to the Charity Commissioner, which is at Annexure 'D'. The petitioner pointed out to the Charity Commissioner that once the tenders are opened, the property cannot be sold away by the Charity Commissioner, by asking the parties to increase the amount, as it would amount to fresh auction. In his application, it is stated that the procedure adopted is not proper and once offers are invited by way of sealed cover, the said procedure by asking the parties to increase the amount, etc., is an illegal procedure, as, according to the petitioner, if this position is to be adopted, there is no sense in inviting offers by way of tender.

3. The Charity Commissioner therafter, by his order dated 17.11.1998, below the said application at Exhibit 'D', observed that two offers are received on the basis of the tender for sale of the said property and that, in the interest of the Trust, it is open for him to find out the appropriate value of the property. The Charity Commissioner found that since the offer of the applicant is of Rs.6,15,000/- and the other offer (i.e. of respondent No.3) is of Rs.6,21,000/-, it would be open for the offerer to increase his offer as the same is in the interest of the Trust. Accordingly, application given by the petitioner about procedure adopted by the Charity Commissioner was rejected by the Charity Commissioner. The effect of the said order is that the Charity Commissioner had given option to increase the bid. At that stage, the petitioner approached this Court by way of the present petition.

4. In the petition, the petitioner has also taken a point that the property in question cannot be sold without the prior permission of the Collector as it is in the disturbed area, and, in that view of the matter, the petitioner was permitted to join the Collector as party-respondent in this petition.

5. At the time of hearing of this petition, it was argued by Mr.Baxi that since the petitioner is a sitting tenant and Agreement to Sell in favour of the petitioner was entered into by the Trust, the Charity Commissioner should have accepted the bid of the petitioner. He further submitted that once tenders were invited, offers received on the basis of such tenders should be accepted by the Charity Commissioner and it was not open for the Charity Commissioner thereafter to ask the offerers to increase their offer with a view to find out better price. It is submitted that once the offer of the petitioner was on the higher side at the time of opening the tender, bid of the petitioner was required to be accepted straight away. It is also submitted that the procedure adopted by the Charity Commissioner is not proper and that, otherwise, there was no sense in inviting tenders by way of sealed cover by giving public advertisement. It is stated that it is not mentioned in the public advertisement that the tenderer or bidder will be allowed to put his bid in the office of the Charity Commissioner by way of any negotiations or even by holding any auction in this behalf. Under the circumstances, it is prayed that the Charity Commissioner should be directed to accept the bid of the petitioner, even though, subsequently, respondent No.3 has offered higher price as compared to the petitioner.

6. The petition is resisted by the Trust as well as by the respondent No.3, whose bid is, admittedly, higher as compared to the petitioner.

On behalf of the Charity Commissioner, Mr.Dagli, learned AGP, has opposed this petition on the ground that the petition is not maintainable and that the Charity Commissioner is entitled to take reasonable care to secure better price for the benefit of the Trust.

7. Considering the rival submissions of the Advocates, I am of the view that this petition is thoroughly misconceived. It is required to be noted that under Section 36 of the Bombay Public Trusts Act, no sale, mortgage, exchange or gift of any immovable property of a Public Trust is valid without the previous sanction of the Charity Commissioner. Therefore, at the time of confirming the sale in favour of a particular party, it is the statutory duty of the Charity Commissioner to see that the Trust is not going to suffer in any manner and appropriate price is received by the Trust. The Charity Commissioner is supposed to act for the benefit of the Trust and for that purpose, ultimately, if it is decided to invite fresh offers or even asking the parties to raise their offer, the said procedure adopted by the Charity Commissioner can be said to be for the benefit of the Trust. An individual party cannot have any say in this behalf as to what procedure the Charity Commissioner should adopt. It is for the Charity Commissioner to adopt whatever procedure with an object to see that the maximum price is received by the Trust. In that view of the matter, it is not open for the petitioner to object to the procedure adopted by the Charity Commissioner by which both the petitioner and the respondent No.3 were permitted to raise their bid and, respondent No.3 is admittedly the highest bidder. Under these circumstances, it cannot be said that the Charity Commissioner, by asking the parties to raise their bid or by holding the so-called auction, as alleged by the petitioner, has committed any irregularity while adopting the said procedure. In my view, the procedure adopted by the Charity Commissioner is absolutely correct and in consonance with the provisions of Section 36 of the Bombay Public Trusts Act, as, ultimately, the Charity Commissioner has tried to see that the Trust may not be put to any financial loss in the matter of selling its property.

So far as the argument of Mr.Baxi regarding Agreement to Sell is concerned, this being a Trust

property, such agreement is always subject to the confirmation of the Charity Commissioner. Now, when the facts of the case show that higher amount is received as compared to the amount fixed in the Banakhat, the Charity Commissioner is not bound to accept such agreement, as accepting such agreement would be detrimental to the interest of the Trust and, therefore, the petitioner cannot take any undue advantage of the fact that there is an agreement to sell in his favour, as, ultimately, it is for the Charity Commissioner to consider whether such agreement is required to be accepted or not. Even otherwise, the Agreement to Sell itself provides that it is subject to the sanction of the Charity Commissioner, as contemplated under Section 36 of the Bombay Public Trusts Act. It is also required to be noted that the petitioner himself has taken part in the so-called auction and has tried to raise his bid, but, unfortunately, he could not meet with the bid of respondent No.3. The petitioner himself having taken part in the auction held by the Charity Commissioner, now, cannot challenge the said procedure adopted by the Charity Commissioner. This petition, at the instance of the petitioner, therefore, cannot be entertained. Even otherwise, the procedure adopted by the Charity Commissioner is absolutely just and proper.

8. So far as the argument of Mr.Baxi about permission of the Collector under the Gujarat Disturbed Areas (Prohibition on Transfer of Property) Act, 1991 is concerned, at the time of confirming the sale, prescribed procedure under the Act is going to be followed by the concerned parties in order to see that the appropriate title is passed in favour of the purchaser. Mr.Bhatt, who is appearing for respondent No.3, has also stated that the confirmation of sale in favour of the purchaser, therefore, will naturally be subject to the requirement of any other provisions of law. The said question, therefore, cannot be examined by this Court at this stage, and, even otherwise, this question is not required to be examined at the instance of the petitioner, who himself has taken part in the auction for the purpose of purchasing the property in question. Further, if any such permission is required to be obtained as per the said provision, the sale in question will always be subject to taking such permission and, therefore, it is not necessary to give any direction in this behalf.

9. So far as the present petitioner is concerned, he is a sitting tenant of the premises and even if the property is transferred after following the procedure of

Section 36 of the Bombay Public Trusts Act in favour of the purchaser, the petitioner is not likely to be dispossessed because so far as tenancy rights are concerned, the same are not going to be affected in any manner in view of the provisions provided under the Bombay Rent Act and Mr.Bhatt also fairly submitted that, ultimately, if the bid of his client is accepted finally by the Charity Commissioner, and if the property is transferred in favour of his client, he will not evict the present petitioner without following the due process of law.

10. In view of what is stated above, there is absolutely no substance in this petition. The petitioner has rushed to this Court, even though, against the final order of the Charity Commissioner under Section 36 of the Act, appeal is provided before the Gujarat Revenue Tribunal. The proceedings are pending before this Court since long. Under these circumstances, the Charity Commissioner is directed to finalise the aforesaid proceedings at the earliest and latest by 15th December, 2002.

11. Before finalising the issue, it will be open for the Charity Commissioner to ascertain whether any higher bid is still available and in order to find out the genuineness of the offerer, it will be open for the Charity Commissioner to ask that person to deposit such amount if he thinks fit. Ultimately, it is required to be remembered that whatever procedure is required to be followed by the Charity Commissioner is for the benefit of the Trust, and for that purpose, the Charity commissioner is free to follow such procedure.

12. In view of what is stated above, the petition is dismissed. Rule is discharged with no order as to costs.

(P.B. Majmudar, J.)

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(apj)